

Report to the Board of Adjustment

Prepared by the Maricopa County Planning and Development Department

Case: BA2005022 Interpretation

Hearing Date: April 13, 2005

Agenda Item: 23

Supervisory District: All

Applicant: Greg E. Linaman for Withey Anderson & Morris P.L.C.

Request: Appeal of an administrative interpretation of the definition of grade as it pertains to cellars and building height.

Site Location: 15833 E. Coconino Drive

Site Size: 155,604-square feet (3.57 ac.)

**Relevant Ordinance
Sections:**

Chapter V, Section 503, Article 503.3 of the Maricopa County Zoning Ordinance defines the building height requirements for properties located in the Rural-43 zoning district:

503.3 The height of buildings shall not exceed 30 feet or 2 stories.

Relevant Definitions:

Chapter 2, Section 201, of the Maricopa County Zoning Ordinance provides the list of definitions which includes the following items:

Cellar: That portion of a building between floor and ceiling which is partly below and partly above grade, but so located that the vertical distance from grade to floor below is greater than the vertical distance from grade to ceiling.

Building Height: The vertical distance from grade to the highest point of the coping of a flat roof; to the deck line of a mansard roof or the height of the highest gable, hip or gambrel roof.

Grade: The lowest point of elevation of the surface of the ground, paving or sidewalk at any point adjacent to a structure or fence/wall. For purposes of calculating structure, building or fence/wall heights, existing established grade shall be utilized on subdivision land and natural, undisturbed grade shall be utilized on unsubdivided land.

Story: That portion of a building, other than a cellar, included between the surface of any floor and the surface of the floor next above it, or, if there be no floor above it, then the space between the surface of such floor and the ceiling or roof above it.

Basement: That portion of a building between floor and ceiling which is partly below and partly above grade, but so located that the vertical distance from grade to floor below is less than the vertical distance from grade to ceiling.

**Current
Interpretation:**

The proposed "cellar" is actually considered to be a "basement" as defined in Chapter 2, Section 201 of the Maricopa County Zoning Ordinance (MCZO) and, therefore, the proposed residence is actually three stories in height as defined in Section 503 of the MCZO. This interpretation is based on a plain reading of Sections 201, and 503 of the Maricopa County Zoning Ordinance.

**Proposed
Interpretation:**

The proposed "cellar" is below "grade" and is therefore not considered to be a "story" or a "basement".

**Staff
Recommendation:**

Approve this interpretation specific to the subject site only

Findings:

1. **Maricopa County Department of Transportation:** No response at the time this report was written.
2. **Flood Control Department:** No response at the time this report was written.
3. **Environmental Services:** No objection to the request (see attached memo).
4. **New River/Desert Hills Community Assoc:** Clear up gray areas in definitions provided in the M.C.Z.O. (see attached letter).

Background:

5. This request came about when the owner of the subject property attempted to obtain permits to construct a single-family residence with a cellar. Typically, this would have been permitted; however, in this case, the property owner's plans for the residence called for the cellar to have an exposed, walk-out patio that would be in essence submerged from view from ground level but would still be open to the sky.

Analysis:

6. The applicant for the property owner is requesting an appeal of an administrative determination that a proposed "cellar" is actually a "basement" and, therefore, a third "story" as defined in the Maricopa County Zoning Ordinance (MCZO) under Chapter 2, Section 201. The applicant believes that this interpretation is incorrect and is proposing that the "basement" is below "grade" and is therefore a "cellar" and not a third "story". It should be noted that under Section 503 of the MCZO, houses are only allowed to be 30 feet or two stories in height. The proposed residence under current County guidelines would be considered to be three stories and would not be permitted. On a small scale, this proposed interpretation would have the effect of allowing a proposed single-family residence to be over 30 feet/two stories in height, though this would have minimal impact on the surrounding properties due to the proposed configuration. On a larger scale, the proposed interpretation may affect properties throughout the County with regards to building height and "grade" issues.
7. This particular request is unusual in that the proposed "cellar" will, for the most part, meet all requirements and be located below grade, yet still have a sunken patio that is open to the sky. This patio is the crux of this interpretation. Does the presence of this patio change the proposed "cellar" into a "basement"? The following diagrams attempt to illustrate the differences between "basements" and "cellars".

(Figures and definitions on following page)

Fig. 1 - Basement: That portion of a building between floor and ceiling which is partly below and partly above grade, but so located that the vertical distance from grade to floor below is less than the vertical distance from grade to ceiling above.

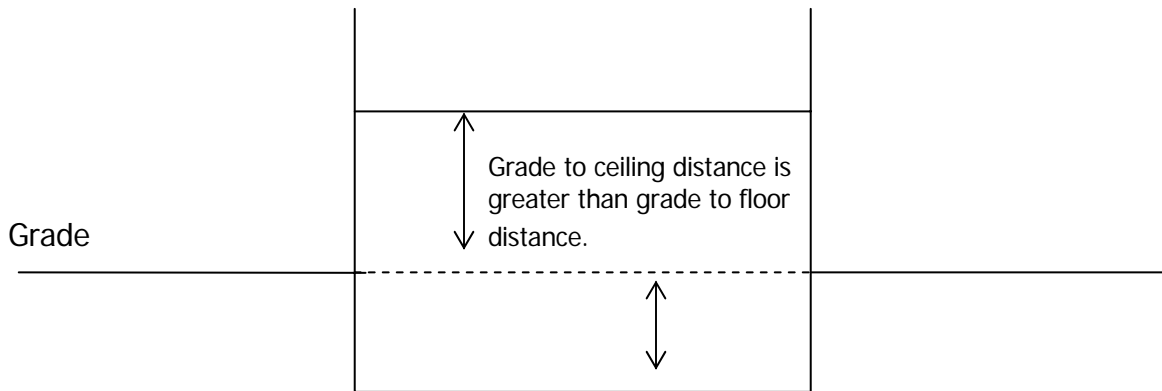
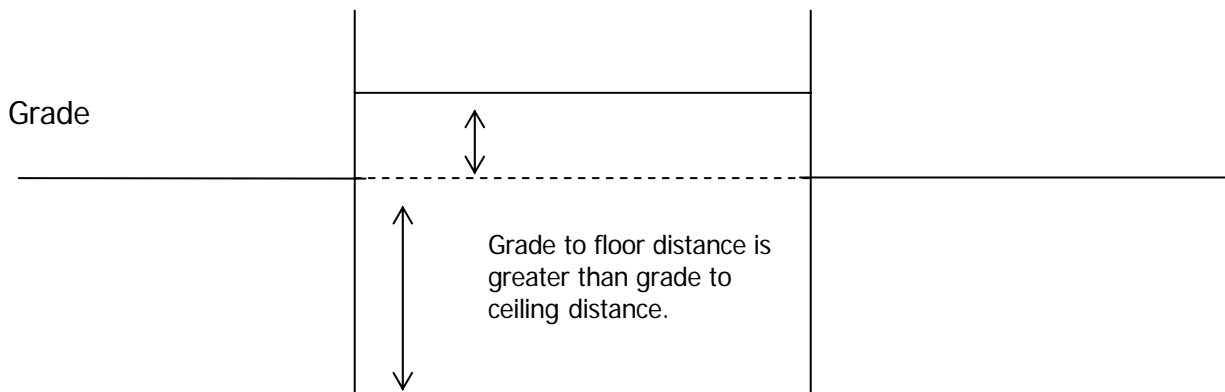
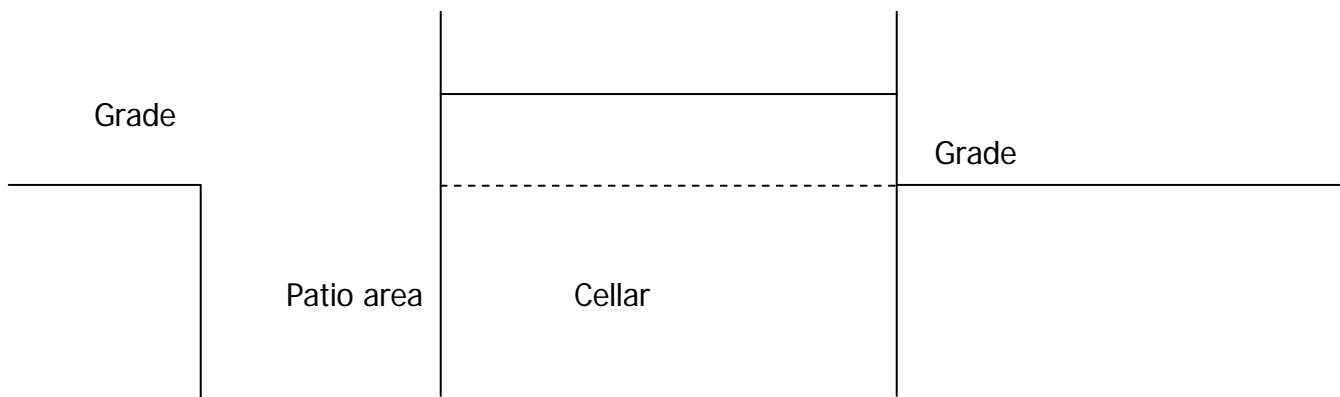


Fig. 2 – Cellar: That portion of a building between floor and ceiling which is partly below and partly above grade, but so located that the vertical distance from grade to floor below is greater than the vertical distance from grade to ceiling above.



8. The applicant wishes to build a cellar similar to that illustrated above in Figure 2. This cellar is different in that it will be adjacent to a sunken patio that will expose one portion of the cellar to the sky. See Figure 3 on the following page for an illustration of the proposed cellar.

Fig. 3 – Proposed cellar:



9. As can be seen from the illustrations provided, the proposed cellar will still meet the intent of the MCZO and appears to meet the definition other than the fact that the *finished* grade of the patio is now more in line with the definition of a “basement”. This led staff to take a conservative view of the definitions of cellar and basement. Cellars are not considered a “story” whereas “basements” are considered to be a story for building height purposes. Since the proposed “cellar” appeared to be a “basement” to staff, it was determined that the proposed single-family residence was three stories in height where only a two story residence is allowed.
10. All this brings us back to the original request regarding the definition of “grade” as it relates to building height. The definition of grade in the MCZO is somewhat unclear, especially in regards to subdivided versus unsubdivided land:

Grade: The lowest point of elevation of the surface of the ground, paving or sidewalk at any point adjacent to a structure or fence/wall. For purposes of calculating structure, building or fence/wall heights, existing established grade shall be utilized on subdivision land and natural, undisturbed grade shall be utilized on unsubdivided land.

This definition is quite different than the definition of “grade” for other counties and cities in Arizona. Most definitions of grade are taken as an average height of the finished grade within a certain distance from a building. No mention could be found in other definitions of subdivided and unsubdivided land. It appears that Maricopa County’s definition of “grade” may be unique.

11. Unique or not, this definition is rather confusing. Staff’s interpretation would typically be that grade *in recorded subdivisions* (read – engineered) would be measured from finished grade while grade in other areas would be measured from natural grade. Unfortunately, this can be interpreted differently depending on the circumstances. We would need to determine the definitions for “subdivided” and “unsubdivided” and such definitions are not

provided in the MCZO. This potentially opens up the definition of "grade" for further interpretation in the future. Staff recommends that the definition of "grade" be redefined via a Text Amendment to the MCZO to make the term more "user friendly" and less open to outside interpretation.

12. It should be noted that staff is handling this interpretation on a site specific basis. This particular request is unique in that the proposed "cellar" is partially exposed to the sky; however, this "cellar" still technically meets the definition in the MCZO. Staff wished to process this interpretation for this particular site and amend the MCZO later to better define the term "grade". Staff did not wish to have a County-wide interpretation as this site is unique in terms of its proposed layout. Other sites in the County may not fit the requirements as well and staff did not wish to give them carte blanc approval via this interpretation. Staff recommends that this interpretation be approved for the proposed cellar on *this site only*.

Recommendation: (BA2005022)

13. Staff recommends **approval** of this appeal request based on the following:
 - The proposed interpretation is not clearly in conflict with a plain reading of the Maricopa County Zoning Ordinance as written in Sections 201 and 503.
 - The proposed interpretation will not result in a negative impact on surrounding properties.
 - The existing definition of "grade" in the Maricopa County Zoning Ordinance is open to interpretation and needs to be re-defined.

clh

Attachments: Case Map BA2005022
Zoning Map
Assessor's Map
Application
Supplemental Questionnaire
Letter from Applicant, dated February 11, 2005 (3 pages)
Environmental Services Memorandum (1 page)
NRDHCA Letter (1 page)